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IN THE MATTER OF ANUND CHUNDER ROY v. NITAI BHOOMIJ.

an appeal in a case in which the former Act did not allow one. They advance the remedy of the subject in this particular respect. We do not think, therefore, that the General Clauses Act applies.

That being so the general principle of law is applicable, that an appeal newly given by law is made applicable to proceedings instituted before that change in procedure is made. That principle is contravened by the General Clauses Act (whether intentionally or not) in cases where the appeal is conferred by means of the operation of the repeal of an existing Act. But that effect of the General Clauses Act must be limited to the cases strictly covered by its provisions. The present is not such a case. We hold, therefore, that the appeal lies to the Court of the Deputy Commissioner. We make the rule absolute.

We set aside the order of the Deputy Commissioner, and direct him to entertain the appeal.

The costs of this Rule will be disposed of by the Deputy Commissioner on the hearing of the appeal we now direct him to entertain. We assess the hearing fee on each side at three gold mohurs.

C. D. P. *Rule made absolute.*

CIVIL REFERENCE.

Before Mr. Justice Wilson and Mr. Justice Trevelyan.

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March 6.

RAMEN CHETTY (PLAINTIFF) *v.* MAHOMED GHOUSE AND ANOTHER (DEFENDANTS).*

Stamp Act, 1879, *Sch. I, Arts.* 11, 19—*Cheque—Bill of Exchange, Admissibility in evidence—Post-dated cheque—Stamp Act*, 1879, *s.* 67—*Penalty.*

In determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shown in evidence, must be looked at.

Bull v. *O'Sullivan* (1), *Gatty* v. *Fry* (2), and *Chandra Kant Mookerjee* v. *Kartik Charan Chaile* (3) referred to.

* Rangoon Reference No. 1 of 1889, made by C. E. Fox, Esq., Officiating Recorder of Rangoon, dated the 11th of January 1889.

(1) L. R., 6 Q. B., 209. (2) L. R., 2 Ex. D., 265.
(3) 5 B. L. R., 103.

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Where a cheque bearing a stamp of one anna was dated the 25th September, and the evidence showed it to have been actually drawn on the 8th September, and therefore to have been post-dated, it was contended that the cheque was really a bill of exchange, payable 17 days after date, and therefore inadmissible in evidence as being insufficiently stamped.

Held, in a suit to recover the amount of the cheque on its being dishonoured, that it was admissible in evidence.

REFERENCE to the High Court at Calcutta under s. 54 of the Burma Courts Act, 1875.

The case was stated as follows in the reference :—

"This suit is described in the plaint as a suit for the recovery of the sum of Rs. 1,543-14 due for principal and interest on a dishonoured cheque.

"The plaint sets out that, on the 8th September 1888, the second defendant drew a cheque on the Bank of Bengal, directing the payment to the first defendant "or bearer" of the sum of Rs. 1,541-5-0.

"The cheque is as follows :—

M. 41036. RANGOON, *25th September*, 1888.

No.——

BANK OF BENGAL. One anna Stamp.

Pay to S. Mahomed Ghouse, or bearer, Rupees fifteen hundred forty one and annas five only (Rs. 1,541-5-0).

(Sd.) TURNER & Co.

"The plaint continues that the first defendant requested the plaintiff to pay the said sum of Rs. 1,541-5, and the plaintiff accordingly paid the same, less discount; that on the 25th September the cheque was presented at the Bank of Bengal for payment, but was dishonoured.

"The second defendant admits having made, and the first defendant admits having endorsed, the cheque, but they defend the suit on the ground that the cheque having been post-dated when made, and the plaintiff having received and dealt with it, knowing it to be post-dated, it cannot be admitted in evidence, and cannot be recovered upon. It is contended that the persons making and dealing with the cheque are subject to the penalty mentioned in s. 67 of the Stamp Act, and that the

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cheque must be regarded as a bill of exchange payable at 17 days after date, and, not being stamped as such, it is inadmissible in evidence by the first clause of the proviso to s. 34 of the Stamp Act. In support of these contentions the cases of *Allen* v. *Keenes* (1) and *Whitwell* v. *Bennett* (2), decided under the older English statutes, and *Forster* v. *Mackreth* (3) are relied on. In the latter case four learned Judges, after much consideration, were all of opinion that in substance a post-dated cheque could not be distinguished from a bill of exchange at so many days' date.

"For the plaintiff it is contended that a person making or dealing with a post-dated cheque is not subject to the penalty mentioned in s. 67, because the word 'cheque' is not expressly mentioned in the section, whereas it is expressly mentioned in s. 61 of the Act. This omission is said to indicate an intention on the part of the Legislature that post-dating cheques should not be subject to penalty, although 'cheque' is defined in the Act as meaning 'a bill of exchange drawn on a banker and payable on demand.' Further, it is contended that the cheque is rightly stamped on the face of it, and that nothing further can be considered in testing whether it is admissible in evidence under the Stamp Act. The cases of *Bull* v. *O'Sullivan* (4), and *Gatty* v. *Fry* (5), are relied on in support of this contention. The judgment of Peacock, C.J., in the case of *Chandra Kant Mookerjee* v. *Kartick Charan Chaile* (6) also supports this view.

"It appears to me that these cases afford great authority for holding that the cheque in suit is admissible in evidence, but being of opinion that s. 67 does attach a penalty to the making of and dealing with a post-dated cheque, thereby differing from the English statutes under which the two English cases above referred to were decided, and in view of the opinion of the Judges in the case of *Forster* v. *Mackreth* (3), I entertain doubt whether in this case, where the allegations in the plaint show that the plaintiff knowingly dealt with a post-dated cheque, that cheque can be admitted in evidence and be recovered on.

"I therefore refer to the High Court the question whether the cheque sued upon in this suit is admissible in evidence."

(1) 1 East, 435; 3 Esp., 281.
(2) 3 B. and P., 559.
(3) L. R., 2 Ex., 163.
(4) L. R., 6 Q. B., 209.
(5) L. R., 2 Ex. D., 265.
(6) 5 B. L. R., 103.

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At the hearing of the reference,—

Mr. *P. O'Kinealy* appeared for the plaintiff, and contended that the cheque was sufficiently stamped, and that there were no findings of fact to bring the case within s. 67.

The defendants were not represented by Counsel.

The following opinions were delivered by the Court (WILSON and TREVELYAN, JJ.):—

WILSON, J.—In my opinion the authorities which are referred to by the learned Recorder in his order of reference are conclusive upon the question which is now before us. The cases of *Bull* v. *O'Sullivan* (1) and *Gatty* v. *Fry* (2), which cases are entirely in accordance with the earlier authorities, are clear to show that in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, you must look at the document itself as it stands, and not at any collateral circumstances which may be shown in evidence; and exactly the same law is laid down in this Court in the judgment of Sir Barnes Peacock in the case of *Chandra Kant Mookerjee* v. *Kartik Charan Chaile* (3) in the passage at page 105 of the report. That is conclusive of the present case; for it is clear, I think, that the present Stamp Act in India ought to be construed according to the same principles of construction as the Stamp Act in England and the earlier Stamp Acts in this country. In argument, apparently, before the Recorder, s. 67 of the Act was referred to. That section imposes penalties in certain cases upon persons who post-date bills of exchange. It is not necessary to say whether a cheque is a bill of exchange within the meaning of that section, or what the effect of that section would be, in any case to which it applied, upon the admissibility of a bill, because in the present case there is no evidence apparently, and certainly no finding, of the circumstance which alone could make the section applicable, namely, the intention to defraud. The result is that we answer the question referred to us in the affirmative.

TREVELYAN, J.—I agree with this decision.

J. V. W.

(1) L. R., 6 Q. B., 209. (2) L. R., 2 Ex. D., 265.
(3) 5 B. L. R., 103.